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Before the
Federal Communications Commission
Washington, DC

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OCT 26 1992

In re Application of

RICHARD P. BOTT, II

Assignor

and

WESTERN COMMUNICATIONS, INC.

Assignee

Federal Communications Commission
Office of the Secretary

93-155

File No. BAPH-92091760

OCT 27 3 30 PM '92
AUDIO SERVICES
DIVISION

For Assignment of Station
KCVI(FM), Blackfoot, Idaho

PETITION TO DENY

Radio Representatives, Inc. ("RRI"), by its attorney, hereby submits its petition requesting the denial of the application for assignment filed by Richard P. Bott, II ("Bott"), permittee of Station KCVI(FM), Blackfoot, Idaho. With respect thereto, the following is stated:

Background

RRI is a former applicant for Channel 268C, Blackfoot, Idaho (File No. BPH-850711MO). Seven applications for the allotment were designated for hearing (Hearing Designation Order, 2 FCC Rcd 3897 (Chief, Audio Services Div. 1987), at which time three applicants, RRI, Bott, and Clare Marie Ferguson, proceeded to hearing. A hearing in this proceeding was held on December 7, 1987, and following decisions by the Presiding Administrative Law Judge (Initial Decision of Administrative Law Judge Edward Luton,

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FME EXAMINERS

3 FCC Rcd 7094 (ALJ 1988) ("Initial Decision"), and the Review Board (Decision, 4 FCC Rcd 4924 (Rev. Bd. 1989), Bott received a substantial integration preference (100% v. 0%) over RRI, while RRI received preferences over Bott on all other components of the standard comparative issue, including a "slight" diversification preference, a slight-to-moderate comparative coverage preference, and a slight auxiliary power preference. Decision, 4 FCC Rcd at 4930. RRI¹ filed an Application for Review with the full Commission, but the Review Board's decision was affirmed by the Commission by Order released on April 12, 1990. Order, 5 FCC Rcd 2508 (1990). An appeal of the decision was sought with the United States Court of Appeals, which was denied on February 22, 1991.

Therefore, as seen by the above, the sole basis for the grant of Bott's application was his receipt of 100% quantitative integration credit.² In his hearing testimony, Bott specifically proposed to serve as the General Manager of the proposed station, working full-time, at least 40 hours per week. Initial Decision at

¹ The application filed by Clare Marie Ferguson also was denied. Decision, 4 FCC Rcd at 4930 ¶ 27. She did not file an Application for Review with the Commission. Therefore, the denial of her application become final on July 5, 1989. Accord, Order, 5 FCC Rcd 2508 n.1.

² As Bott conceded in his "Bott Broadcasting Corporation's Statement in Support of Initial Decision and Contingent Limited Exceptions":

the Presiding Judge held that Bott was entitled to the construction permit on the basis of the dispositive integration preferences over both RRI and Ferguson.

See Attachment 1.

7094 ¶ 5. As General Manager, Bott committed to move to Blackfoot, Idaho, and make that his residence if his application is granted. Id.

The permit for the assignment was issued to Bott on December 18, 1991. Attachment 2. On September 17, 1992, Bott filed an application with the Commission for the assignment of the unbuilt station, seeking to assign the unbuilt permit to Western Communications, Inc., licensee of Stations KECN(AM) and KLCE(FM), Blackfoot, Idaho.

The Application for License Must be Designated for Hearing

Section 73.3597(a) states:

If, upon the examination of an assignment for FCC consent to an assignment for a broadcast construction permit...it appears that the station involved has been operated on-air by the current licensee or permittee for less than one year, the application will be designated for hearing on appropriate issues unless the FCC is able to find that:

(1) The permit or license was not authorized...after a comparative hearing...

47 C.F.R. § 73.3597(a).

That is precisely what is occurring in this proceeding. At no time did RRI enter into a settlement with Bott for resolution of this proceeding. RRI litigated this case through all levels of the Commission and through the United States Court of Appeals.

~~The only reason Bott can stand before the Commission at this time~~

made to the FCC that its principal would work full-time at the Blackfoot facility. In the Integration Statement filed with the FCC September 11, 1987, Bott stated:

Richard P. Bott, II, an individual applicant, proposes to work full-time, 40 or more hours a week, as General Manager of his proposed station at Blackfoot, Idaho. In this capacity, he will supervise all personnel and otherwise will be responsible for all day-to-day operations at the station in the areas of programming, promotion, technical operations

Blackfoot represents an opportunity for me to get out into business on my own and to have my own radio station and build something for myself.

TR 56. Attachment 5. Accord, Attachment 6 (Bott Exh. 4) at 3.

Q: Assuming you get this grant do you have any plans right now to only own this property for a finite period of time?

A: No, I have no plans to sell if that's what you mean.

* * *

Q: Do you intend to live in Blackfoot for an indefinite period of time?

A: Yes.

TR 77-78 (Attachment 5). Bott continued to claim that he would move to Blackfoot and work full-time (40 hours per week) in the Proposed Findings of Fact and Conclusions of Law of Richard P. Bott, II filed on February 8, 1988, whereby Bott asserted:

Richard P. Bott, II will be permanently integrated into the day-to-day operation and management of his proposed station on a full-time basis of at least 40 hours per week.

Proposed Findings of Fact and Conclusions of Law at ¶ 70.
Attachment 7, hereto. This resulted in the award to him of 100% quantitative integration credit. Initial Decision of Administrative Law Judge Edward Luton, 3 FCC Rcd at 7096 ¶ 38.
Bott directly relied on the integration preference obtained by him in arguing in support of the affirmance of the grant of his

KQCV(AM), Oklahoma City, Oklahoma, Station WFCV(AM), Fort Wayne, Indiana, and Station WCRV(AM), Collierville, Tennessee. See Decision, 4 FCC Rcd at 4926 ¶ 12 and 4930 n.6.

application before the Review Board⁴ and never withdrew his integration statement throughout the pendency of exceptions before the Review Board (January 11, 1989 - June 5, 1989), the Application for Review before the Commission (July 7, 1989 - April 12, 1990), of the Appeal before the United States Court of Appeals for the District of Columbia Circuit (April 30, 1989 - February 22, 1991). Moreover, specific questions were raised by RRI to the Court on February 7, 1991 concerning whether Bott truly intended to effectuate his integration commitment in the Blackfoot proceeding. Bott specifically claimed that although "RRI constructs a theory that Bott will not carry through on his integration pledges Bott made to the FCC in the instant case...[that] claim is wide of its mark." Attachment 8 at 2.

As it turns out in this proceeding, RRI hit the "mark" squarely center -- Bott has abandoned his integration pledge, he will not work full-time at the proposed station, he will not move to Blackfoot, and Bott's actions have made a mockery the entire six - year Commission proceeding whereby the Commission sought to choose the best qualified applicant to own and operate the Blackfoot by Bott's cavalier choice to blithely abandon his

⁴ As noted earlier, Bott asserted in the "Bott Broadcasting Corporation's Statement in Support of Initial Decision and Contingent Limited Exceptions" filed on January 11, 1989:

the Presiding Judge held that Bott was entitled to the construction permit on the basis of the dispositive integration preferences over both RRI and Ferguson.

See Attachment 1.

integration pledge in this proceeding. No mention is made in his application concerning why Section 73.3597(a) of the Commission's Rules is not applicable, and indeed, none exists. As the Commission recently stated in Urban Telecommunications Corp., 7 FCC Rcd 3867 (1992):

we retained the restrictions on unbuilt construction permit assignments and transfers for profit and imposed a one-year holding period after operations commences for stations which are obtained as a result of grant through comparative hearing or pursuant to the Commission's minority ownership policies. Our primary rationale for keeping the nonprofit rule intact and for maintaining a one-year holding permit was "to maintain the integrity of the Commission's licensing processes. ..." Amendment of §73.3597, 52 RR 2d at 1089.

2 FCC Rcd 218
Id. at 3870 ¶ 15. See also, TV-8, Inc., 62 R.R.2d 580, 586 (1987) (Commission confirms that it specifically retained the requirement that an application be designated for hearing where an application was granted as a result of a preference given in a comparative hearing).

To grant Bott's assignment application at this time would undermine the very foundation of the Commission's comparative hearing process. The two primary factors considered by the Commission in its comparative hearings are "best practicable service to the public" and diversification of media. Policy Statement on Comparative Broadcast Hearings, 5 R.R.2d 1901, 1908 (1965). ("Policy Statement"). *2 FCC Rcd 190* As noted above, RRI specifically was judged superior to Bott under the "diversification" factor, and under certain aspects of the factor of "best practicable service."

Richard P. Bott, II, 4 FCC Rcd 4930, ¶ 27 (Rev. Bd. 1988).⁵ With respect to "integration," maximum credit is given for proposed full-time participation by applicants' principals (40 or more hours per week), and much reduced credit is given for part-time participation. Policy Statement, 5 R.R.2d at 1909; Omaha TV 15, Inc., 4 FCC Rcd 730, 735, ¶ 29 (1988); Van Buren Community Broadcasters, Inc., 87 F.C.C.2d 1018, 1022 (Rev. Bd. 1981); Theodore Granik, 10 R.R.2d 659, 671 (Rev. Bd. 1967); High Sierra Broadcasting, Inc., 96 F.C.C.2d 423, 429 (Rev. Bd. 1983). The FCC will only grant integration credit where the proposed participation at the station is "permanent" (Policy Statement, 5 R.R.2d at 1909) -- it is not enough that the principal will work at the station or own it for only a limited period of time. Dovlan Forney, 3 FCC Rcd 6330, 6334, ¶ 22 (Rev. Bd. 1988); Signal Ministries, Inc., 104 F.C.C.2d 1481, 1487 n.16 (Rev. Bd. 1986); Theodore Granik, 10 R.R.2d 659, 669, 672 (Rev. Bd. 1967). However, by virtue of Bott's actions, "permanent" adherence to an integration pledge will not occur here. Bott apparently will not serve for even one minute as the full-time integrated owner/manager of the facility. He is abandoning the commitment made to the Commission. In stark contrast to Bott, RRI, however, remains ready, willing, and able to effectuate the proposal it placed before the Commission for comparative consideration. Bott therefore should not be allowed to violate the Commission's rules, abandon his pledge, and sell the

⁵ As seen above, RRI was granted preferences for its proposal to install auxiliary power (a feature Bott's proposal did not include) and for superior comparative coverage.

station to an outsider. Under the circumstances presented here,
the Commission's Rule represents an absolute ban on the
assignability of the permit at this time.⁶ Accordingly,
Bott's application is patently not in accord with the Commission's
Rules, and must be denied.

WHEREFORE, it is respectfully requested that this Motion
be granted.

Respectfully submitted,

RADIO REPRESENTATIVES, INC.

By: 

Dan J. Alpert

Its Attorney

1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 637-9158

October 26, 1992

⁶ It should be noted that in the Commission's recent review
of its comparative hearing process, it is now specifically
requiring applicants to provide information when the station
commences operation concerning the question of whether the
applicant has fulfilled the representations made to the Commission
during the course of the underlying comparative hearing. Proposals
to Reform the Commission's Comparative Hearing Process to Expedite
the Resolution of Cases, 6 FCC Rcd 157, 160 ¶ 22 (1990) ("oversight
of applicant's adherence to comparative promises is appropriate";
"ensuring at least one full year's compliance with such promises"
is adopted). Bott's abdication of his commitment to become
integrated into the facility has therefore rendered the station
unlicenseable. Accord, 47 C.F.R. § 1.68 (failure to abide by the
terms, conditions, and obligations set forth in an applicant's
application requires application for license to cover to be
designated for hearing).

ATTACHMENT 1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of)	MM Docket No. 87-223
)	
RICHARD P. BOTT, II)	File No. BPH-850711MM
)	
RADIO REPRESENTATIVES, INC.)	File No. BPH-850711MO
)	
CLARE MARIE FERGUSON)	File No. BPH-850712MS
)	
For Construction Permit for)	
a New FM Station in)	
Blackfoot, Idaho)	

To: The Review Board

BOTT BROADCASTING CORPORATION'S STATEMENT
IN SUPPORT OF INITIAL DECISION AND
CONTINGENT LIMITED EXCEPTIONS

BOTT BROADCASTING CORPORATION

Barry A. Friedman
Michael Drayer

Its Attorneys

WILNER & SCHEINER
Suite 300
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Dated: January 11, 1989

6. The Presiding Judge concluded that Bott was a superior applicant to RRI because his superior integration proposal (100% plus qualitative enhancements to 0% for RRI) overcame RRI's slight preference for its auxiliary power proposal, its slight-to-moderate coverage preference and its de minimis diversification edge. I.D. at paras. 59-60. The Presiding Judge concluded that Bott was a superior applicant to Ferguson based on his decisionally significant quantitative integration (100% to 50%). Therefore, the Presiding Judge held that Bott was entitled to the construction permit on the basis of the dispositive integration preferences over both RRI and Ferguson. No reason of any kind exists to reverse this result.

III. QUESTIONS PRESENTED

- A. Whether the Presiding Judge erred in assessing a moderate diversification demerit against Bott?
- B. Whether the Presiding Judge incorrectly assessed a slight-to-moderate diversification demerit against RRI?
- C. Whether the Presiding Judge erred in assessing a moderate diversification demerit against Ferguson?
- D. Whether the Presiding Judge acted improperly in awarding RRI a slight-to-moderate comparative coverage preference?

ATTACHMENT 2



FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION CONSTRUCTION PERMIT

Official Mailing Address:

RICHARD P. BOTT, II
8603 BUCKINGHAM LANE
KANSAS CITY, MO 64138

Authorizing Official: *Robert D. Greenberg*

Robert D. Greenberg
Supervisory Engineer, FM Branch
Audio Services Division
Mass Media Bureau

Grant Date: DEC 18 1991

Call sign: 850711MM

This permit expires 3:00 am.
local time 18 months after
grant date specified above

Permit File No.: BPH-850711MM

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of permittee:

RICHARD P. BOTT, II

Station Location:

ID-BLACKFOOT

Frequency (MHz): 101.5

Channel: 268

Class: C

Call sign: 850711MM

Permit No.: BPH-850711MM

Hours of Operation: Unlimited

Transmitter location (address or description):

LITTLE BUTTE ANTENNA SITE, 42.8 KILOMETERS NORTHWEST OF
BLACKFOOT, BINGHAM COUNTY, IDAHO.

Transmitter: Type accepted. See Sections 73.1660, 73.1665 and 73.1670
of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: (directional or non-directional): Non-directional

Antenna coordinates: North Latitude: 43 30 3.0
West Longitude: 112 39 43.0

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the horizontal plane (kW) :	100.0	100.0
Height of radiation center above ground (meters) :	44.0	44.0
Height of radiation center above mean sea level (meters) :	2030.0	2030.0
Height of radiation center above average terrain (meters) :	461.0	461.0
Overall height of antenna structure above ground (including obstruction lighting, if any) :	55.0 meters	

Obstruction marking and lighting specifications for antenna
structure:

It is to be expressly understood that the issuance of these specifications
is in no way to be considered as precluding additional or modified marking
or lighting as may hereafter be required under the provisions of Section

Special operating conditions or restrictions:

BEFORE PROGRAM TEST AUTHORITY IS AUTHORIZED BY THE COMMISSION PERMITTEE SHALL SUBMIT DOCUMENTATION OF COMPLIANCE WITH THIS SPECIAL OPERATING CONDITION ALONG WITH THE FORM 302, APPLICATION FOR LICENSE, AND THE REQUEST FOR PROGRAM TEST AUTHORITY. THE PERMITTEE SHALL, UPON COMPLETION OF CONSTRUCTION AND DURING EQUIPMENT TEST PERIOD, MAKE PROPER RF FIELD STRENGTH MEASUREMENTS THROUGHOUT THE LITTLE BUTTE ANTENNA SITE AREA TO DETERMINE IF THERE ARE ANY AREAS THAT EXCEED THE ANSI, AND FCC SPECIFIED GUIDELINES FOR HUMAN EXPOSURE TO RADIOFREQUENCY RADIATION. IF NECESSARY, A FENCE MUST BE ERECTED AT SUCH DISTANCES AND IN SUCH A MANNER AS TO PREVENT THE EXPOSURE OF HUMANS TO RADIOFREQUENCY RADIATION IN EXCESS OF THE AMERICAN NATIONAL STANDARDS INSTITUTE GUIDELINES (OST BULLETIN NO. 65, OCTOBER 1985). THE FENCE MUST BE OF A TYPE WHICH WILL PRECLUDE CASUAL OR INADVERTENT ACCESS, AND MUST INCLUDE WARNING SIGNS AT APPROPRIATE INTERVALS WHICH DESCRIBE THE NATURE OF THE HAZARD. ANY AREAS WITHIN THE FENCE FOUND TO EXCEED THE RECOMMENDED GUIDELINES MUST BE CLEARLY MARKED WITH APPROPRIATE VISUAL WARNING SIGNS.

ATTACHMENT 3

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of)	MM Docket No. 87-223
RICHARD P. BOTT, II)	File No. BPH-850711MM
RADIO REPRESENTATIVES, INC.)	File No. BPH-850711MO
CLARE MARIE FERGUSON)	File No. BPH-850712MS
For a Construction Permit)	
For a New FM Station)	
Blackfoot, Idaho)	
To: Administrative Law Judge Edward Luton		

INTEGRATION STATEMENT

Richard P. Bott, II, by his attorneys and pursuant to the Administrative Law Judge's Order, FCC 87M-2081 (released September 4, 1987), hereby files his integration statement in this proceeding.

Richard P. Bott, II, an individual applicant, proposes to work full-time, 40 or more hours per week, as General Manager of his proposed station at Blackfoot, Idaho. In this capacity, he will supervise all personnel and otherwise will be responsible


2.

Further, Mr. Bott's application for Blackfoot, as amended, correctly reflects the other broadcast interests which now are attributable to him.

Respectfully submitted,

RICHARD P. BOTT, II

By



HARRY C. MARTIN

His Attorney

Reddy, Begley & Martin
2033 M Street, N.W.
Washington, D.C. 20036

September 11, 1987

ATTACHMENT 4

Richard P. Bott, II
MM Docket No. 87-223
File No. BPH-850711MM

Bott Exhibit No. 3

INTEGRATION PROPOSAL

Richard P. Bott, II, an individual applicant, will be integrated into the day-to-day operation and management of his proposed FM radio station.

Mr. Bott will serve as General Manager of the proposed station, working at the station on a full-time basis of at least 40 hours per week. As General Manager, he will supervise all personnel and otherwise be responsible for all day-to-day operations of the station in the areas of programming, promotion, technical operations, and business affairs. ✓

Richard P. Bott, II
MM Docket No. 87-223
File No. BPH-850711MM

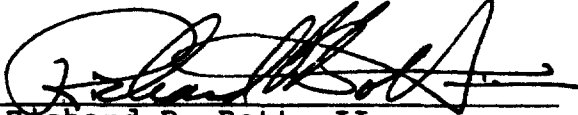
Bott Exhibit No. 3
Page 2

DECLARATION

I, Richard P. Bott, II, declare under penalty of perjury,
that the information contained in the foregoing exhibit is true
and correct, to the best of my knowledge and belief.

Further Declarant sayeth not.

Executed at Collierville, TN on the 20th day of
November, 1987.


Richard P. Bott, II

ATTACHMENT 5

ORIGINAL
Transcript of Proceedings

BEFORE THE

70-1-60

1 JUDGE LUTON: Don't assume. Please don't
2 assume.

3 BY MR. ALPERT:

4 Q Have any steps been taken so far to replace
5 you?

6 A Yes.

7 Q What steps?

8 A I anticipated your next question probably. My
9 father has been reviewing several resumes in that
10 regard.

11 Q Maybe this goes back to an earlier question,
12 but do you intend to leave Bott Communications
13 irregardless of the grant of this application or you
14 only intending to leave Bott Communications --

15 A Do you mean Bott Broadcasting?

16 Q Yes, Bott Broadcasting.

17 A If I could digress for a moment which will
18 help clarify the question, I think, that you're asking.
19 That is that the situation in Blackfoot represents an
20 opportunity for me to get out into business on my own
21 and to have my own radio station and build something for
22 myself.

23 Q Just as the Central Valley facility is?

24 A As my Central Valley facility, however, with
25 the two of them I plan to hire a station manager or a